UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:	BKY No. 09-50779 ADV No. 10
Dennis E. Hecker,	
Debtor.	
Randall L. Seaver, Trustee,	
Plaintiff,	COMPLAINT
vs.	COMPLAINT
William Prohofsky,	
Defendant.	
Randall L. Seaver, Trustee of the Bankruptcy Estate	of Dennis E. Hecker as and for his
Complaint against William Prohofsky, states and alleges as	follows:
1. Trustee is the duly appointed Chapter 7 Trus	tee of the bankruptcy estate of the
debtor.	
2. This bankruptcy case was commenced on June	e 4, 2009 by the filing of a voluntary
Chapter 7 petition.	

4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §§541, 542, 548 and 550.

This adversary proceeding is a core proceeding within the meaning of 28 U.S.C.

3.

§157(b)(2).

- 5. William Prohofsky is a friend of the debtor, Dennis Hecker. At one time, Prohofsky was married to the mother of Tamitha Hecker. Tamitha Hecker is the former spouse of Dennis Hecker.
- 6. In the two weeks prior to filing his bankruptcy petition, Dennis Hecker and William Prohofsky conspired to and did create and effect a scheme to defraud the bankruptcy estate.
- 7. Hecker, in the two weeks prior to filing bankruptcy, with the consent, agreement and assistance of William Prohofsky, caused business entities, which Hecker controlled, to transfer into a Wells Fargo account of William Prohofsky, ending in numbers 2073 ("Prohofsky Account") in excess of \$80,000 ("Hecker Funds"). Those transfers and the source of funds for those transfers were as follows:

May 22, 2009	\$ 5,000.00	Walden Auto Leasing III, Inc., check #1031. Ex. 1
May 22, 2009	\$23,000.00	Walden Auto Leasing Holding Co., check #1124.
		Ex. 2.
May 28, 2009	\$20,500.00	Wire transfer from U.S. Bank.
June 4, 2009	\$33,057.00	Wire transfer from Walden Fleet Services account
		at Bank of the West. Copy of the wire transfer
		confirmation is attached hereto as Exhibit 3.
	\$ <u>81,557.00</u>	

- 8. The Hecker Funds monies were deposited into the Prohofsky Account at the direction of Hecker with the intention of secreting and concealing from the trustee and others, monies being concealed for the sole use and benefit of Hecker.
- 9. After deposit of the Hecker Funds into the Prohofsky Account, Dennis Hecker provided specific and exclusive direction to William Prohofsky in the use of those funds. Those funds at the direction of Hecker, were used for payment of the bills of Dennis Hecker, and to

provide cash and gift cards to Hecker and Christi Rowan. Copies of some of the checks written from the Prohofsky Account at the direction of Hecker to pay Hecker's bills are attached hereto as Exhibit 4.

- 10. On June 11, 2009, \$10,000 in gift cards were purchased with Hecker Funds from the Prohofsky Account. Histories for two of those gift cards are attached hereto as Exhibits 5 and 6.
- 11. A copy of check number 8787 in the amount of \$5,000 payable to Christi Rowan from the Prohofsky Account is attached hereto as Exhibit 7. A copy of check number 8835 in the amount of \$9,800 payable to Christi Rowan from the Prohofsky Account is attached hereto as Exhibit 8.
- 12. Hecker provided instructions, at all relevant times, to Prohofsky, as to how the Hecker Monies contained in the Prohofsky Account were to be spent. At Hecker's direction, Prohofsky wrote over 50 checks from the Prohofsky Account for Hecker's benefit. Attached hereto as Exhibit 9 is a true and correct copy of a handwritten ledger sheet directing Prohofsky to make certain payments. These checks were written post-petition and were cashed post-petition.
- 13. Prohofsky was directed to pay by check all items on the document attached hereto as Exhibit 10. All of these checks were written pre-petition and were cashed both pre- and postpetition.

- 14. Prohofsky wrote checks on the Prohofsky Account as directed by Dennis Hecker. When he wrote those checks, Prohofsky wrote the check numbers next to the payment instructions.
- 15. On June 4, 2009, the day the date Hecker filed his Chapter 7 petition, the Prohofsky Account had a balance of in excess of \$53,000. Almost all of the money in the Prohofsky Account on the day of filing became property of the bankruptcy estate.
- 16. Neither Dennis Hecker nor William Prohofsky voluntarily disclosed the existence of the Prohofsky Account to the trustee. The trustee learned of the existence of the Prohofsky Account only as a result of serving a subpoena upon Prohofsky. Attached hereto as Exhibit 10 are copies of the cover page and pages 17-28, 45-52 and 65-72 of the February 10, 2010 Rule 2004 Examination of William Prohofsky.
- 17. In exchange for Prohofsky conspiring and agreeing with Hecker to participate in the scheme to defraud the bankruptcy estate, Hecker caused his companies to pay Prohofsky monies in addition to the \$81,557 described at paragraph 7 hereof. Those monies exceeded \$15,000, and were monies under the control and direction of Dennis Hecker.

COUNT 1

FRAUDULENT TRANSFERS

- 18. Plaintiff realleges and reaffirms paragraphs 1 through 17 above.
- 19. The transfers to Prohofsky in the amount of \$81,557 were fraudulent transfers of monies over which Dennis Hecker had complete and exclusive control. The transfers totaling

\$81,557 were made with actual intent to hinder, delay and defraud the trustee and creditors of Hecker.

COUNT 2

ESTATE PROPERTY

- 20. Plaintiff realleges and reaffirms paragraph 1 through 19 above.
- 21. Upon the filing of Hecker's Chapter 7 petition on June 4, 2009, all of the Hecker Funds in the Prohofsky Account became property of the bankruptcy estate. The account balance on the day of filing was \$53,422.95, and almost all of these funds were estate property.
- 22. Prohofsky was required, by the provisions of 11 U.S.C. §542(a) to turnover those funds to the trustee.
- 23. Prohofsky did not turn over those funds to the estate but rather, concealed them and continued to participate in the scheme whereby those funds were concealed from the trustee.
 - 24. Prohofsky is liable to the estate for the sum of at least \$50,000.

COUNT 3

- 25. Plaintiff realleges and reaffirms paragraph 1 through 24 above.
- 26. In addition to the \$81,557 received by Prohofsky, he also received in excess of \$15,000 as payment for his role in the scheme and conspiracy to hide assets from the trustee.
- 27. Because all monies received by Prohofsky pursuant to the scheme were monies under the exclusive control and direction of the debtor, they are assets of Hecker which were transferred to Prohofsky with the intent to hinder, delay or defraud creditors and the trustee.

28. All of those transfers, which total in excess of \$15,000, are avoidable pursuant to 11 U.S.C. §548 and recoverable by the trustee pursuant to 11 U.S.C. §550.

WHEREFORE, the trustee respectfully requests a judgment of the court as follows:

1. Entering judgment against the defendant in the amount of \$81,557 pursuant to

Count 1 hereof.

2. Entering judgment against the defendant in an amount of not less than \$50,000

pursuant to Count 2 hereof.

3. Entering judgment against the defendant in an amount in excess of \$15,000

pursuant to Count 3 hereof.

4. Awarding the plaintiff his costs and disbursements herein.

5. Granting such other and further relief as the court deems just and equitable.

LEONARD, O'BRIEN, SPENCER, GALE & SAYRE, LTD.

Dated: February 24, 2010

By: /e/ Matthew R. Burton

Matthew R. Burton #210018 100 South Fifth Street, Suite 2500 Minneapolis, MN 55402 (612) 332-1030

Attorneys for Randall L. Seaver, Trustee

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Vendor No. PRODOB William Prohofsky

INVOICE DATE INVOICE NO.

05/22/2009 1031 MANAGEMENT FEE Check Date 05/22/2009

Check No. 1031

ACCT NO SUB ACCT CONTROL ID

AMOUNT(S) PAID AMOUNT(S)

6502B 300

5.000.00 5.000.00

5,000.00

Total

5.000.00

2-10-10

Chaisi Laura

284691

WALDEN AUTO LEASING III, INC.

500 FORD ROAD MINNEAPOLIS, MN 55426 USBANK 24-84/1230

CHECK NO.

1031

PAY

1031

FIVE THOUSAND AND 00/100 DOLLARS**

DATE

AMOUNT

TO THE ORDER

William Prohofsky 10401 Cedar Lake Road Unit 303

05/22/2009

\$5,000.00

Minnetonka, MN 55365

homas.

TWO SIGNATURES REQUIRED

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PROHØFSKY/15

ridor No. PRODOB William Prohofsky Check Date 06/22/2009

Check No. 1124

INVOICE NO. INVOICE DATE

ACCT NO SUB ACCT CONTROL 1D

PAID AMOUNT(S) AMOUNT(S)

05/22/2009 1124 EXPLUSE REINDURSEMENT 60111 900 23.000.00 23.000.00

23,000.00

Total

23,000.00

26487W

WALDEN AUTO LEASING HOLDING CO.

500 FORD ROAD MINNEAPOLIS, MN 56428 UBBANK 24-84/1230

CHECK NO.

1124

1124

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TWO SIGNATURES REQUIRED

TWENTY THREE THOUSAND AND CO/100 DOLLARS*****************

DATE

AMOUNT

05/22/2009

\$23,000.00

aht (

William Prohofsky 10401 Cedar Lake Road Unit 303 Minnetonka. MN 65305

1100115411



Denny Heckers Automotive Group Inc

Customer Id: 400963 User Name: TOMSCH01 18-Jun-2009 01:02:18 PDT Wire Detail Report

Msg Type

FED

33,057.00

Amount Beneficiary

WELLS FARGO BANK, NA - F/121000248

Bank

BAN FRANCISCO CA SAN FRANCISCO, CA

Status

CONFIRMED

Confirmation

Message Control # IMAD: Q

Entered on:

03JUN2009

Created on: Modified on:

Approved on:

2009-08-03 at 14:27:30 by TOMSCH01 2009-06-04 at 06:55:22 by TOMSCH01 2009-06-04 at 07:01:06 by RICHAGÓ1 2009-06-04 at 07:01:06 by RICHAG01

175 Ref:

Released on: Placed in In-Process on:

2009-06-04 at 07:01:10 by IISI

Confirmed on: Confirmed on:

2009-08-04 at 07:01:19 by IISI 2009-08-04 at 07:01:21 by IISI Account

Info

BOW | 397000571 | Walden Fleet Services II Inc |

USD

04JUN2009 Value Date

Beneficiary

WILLIAM PROHOFSKY

83

Sequence #

Wire Ref #

End of Data

EXHIBIT

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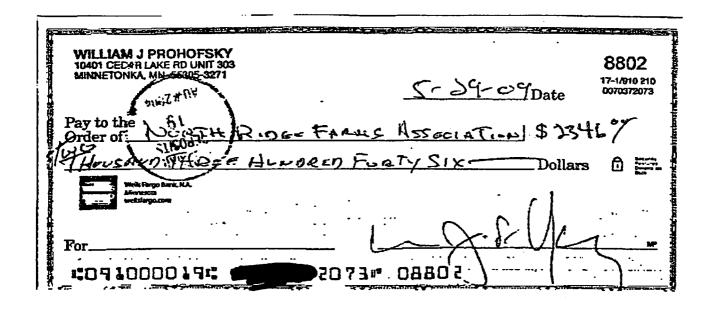
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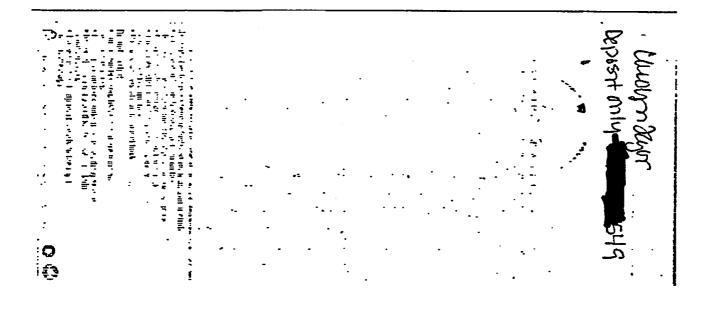


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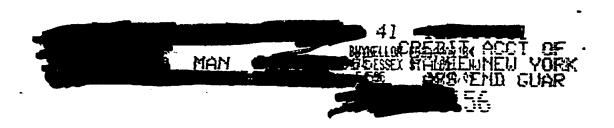
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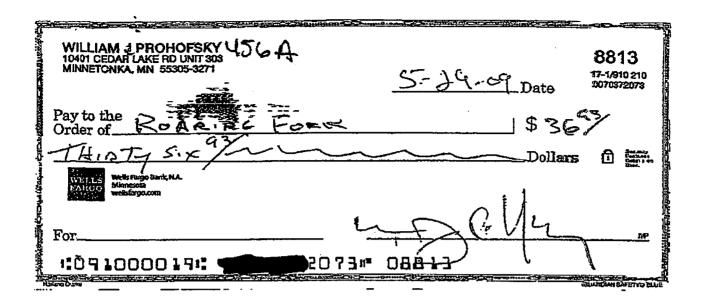
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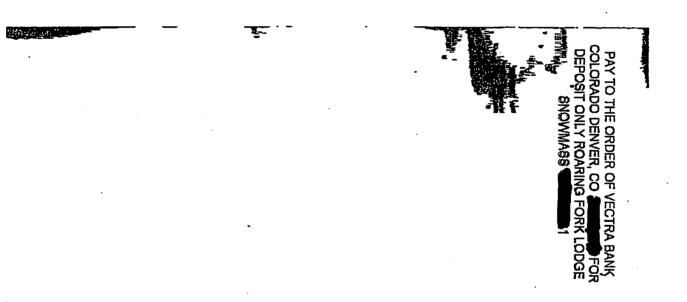
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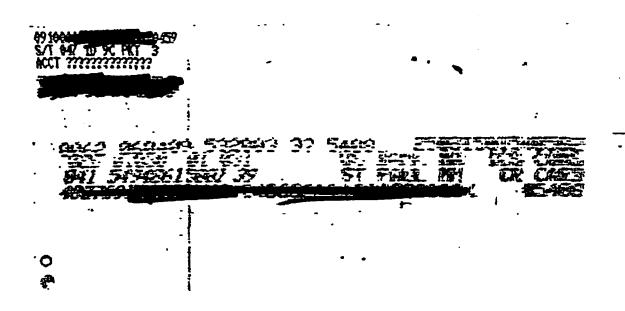
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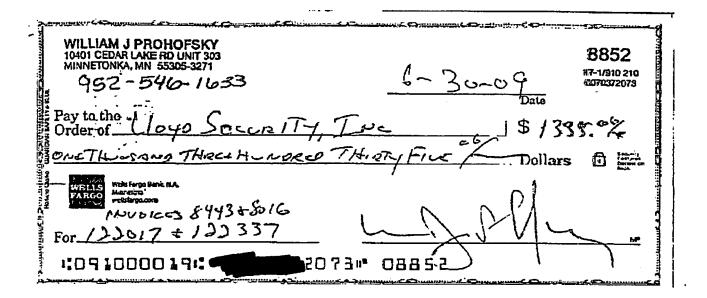
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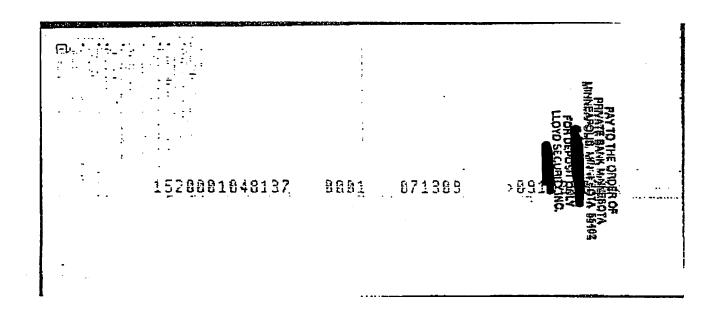
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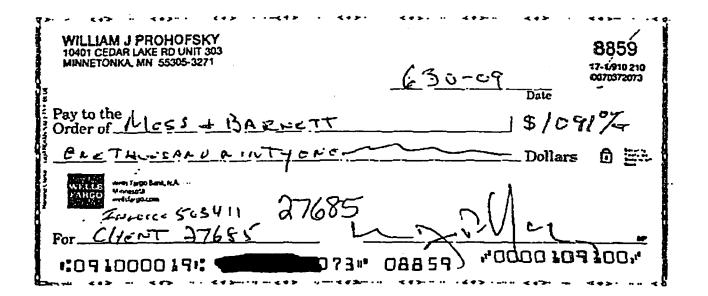


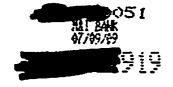
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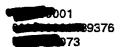
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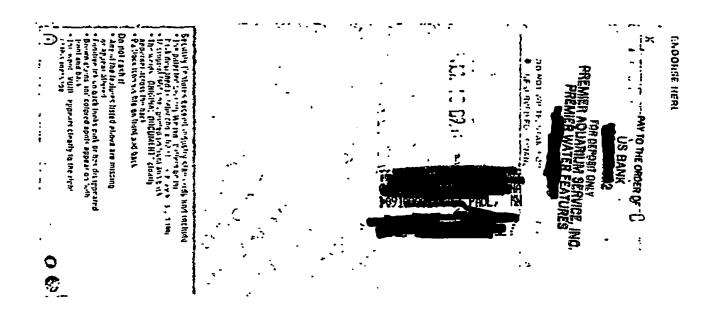
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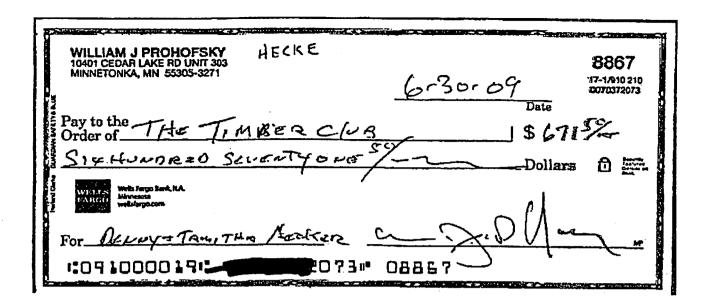
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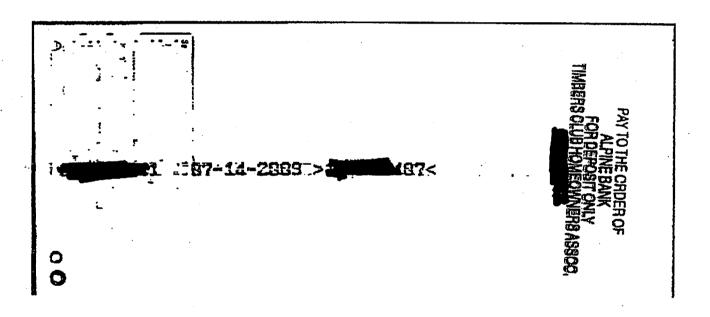
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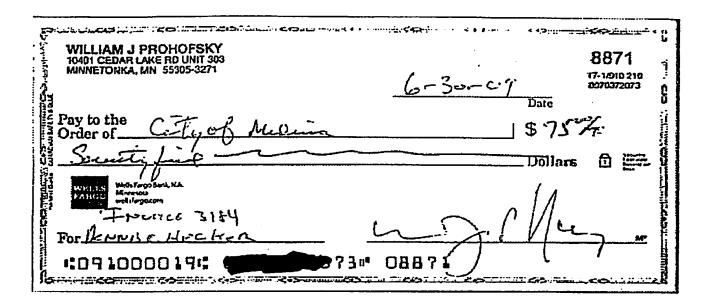
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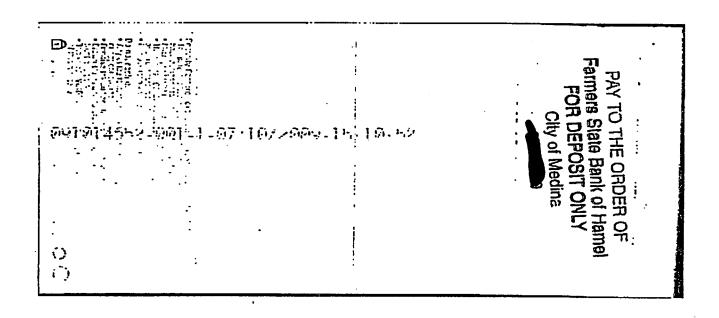
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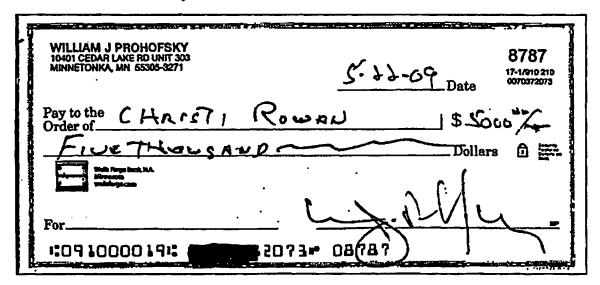
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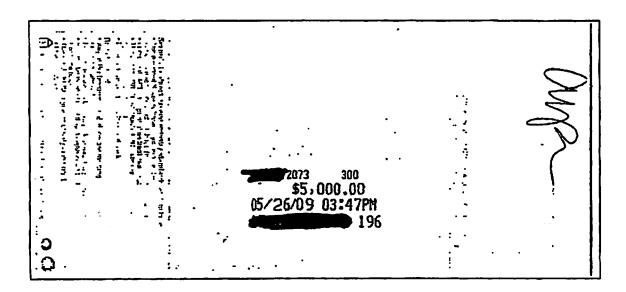
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07/30/2009 08/01/2009	909 Purchase - Quick Payment Service, Fast Food Restaurants	\$4.19 Fak
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07/28/2009 07/30/2009	009 Purchase - Eating Places, Restaurants	\$1.18 Fak
ISLES MARKET	MINNEAPOLIS MN US	24013399210009143384145
07/26/2009 07/28/2009	DO9 Purchase - Men's and Women's Clothing Stores	\$63.28 Fak
UNDER ARMOUR	ASPEN CO US	24071059208330142747089
07/26/2009 07/28/2009	D09 Purchase - Gift, Card, Novelty, and Souvenir Shops	\$229.11 Fak
RADIO BOARD SHOP	ASPEN CO US	24019519208208296178103
07/22/2009 07/23/2009	D09 Purchase - Women's Ready to Wear Stores	\$190.00 Falt
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Processing Date 20090526 Amount **Check Number**

5000.00 8787

Reference: 1000035709162:1000035709162:1000035708161

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